IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3554 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

NATHA MADIA

Appearance:

1. Special Civil Application No. 3554 of 2003
MS MEGHA JANI for Petitioner No. 1-3
MR MS TRIVEDI for Respondent No. 1
MR RAJENDRA M DESAI for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 07/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

Rule. Mr. Trivedi, learned counsel for respondent waives service of rule.

2. By consent and at the joint request of the learned counsel for the parties, this matter is finally heard and disposed of by this order.

3. The present respondent joined railway on 20/3/1974. He was suffering from psychological disorder and, therefore, he proceeded on leave. He was hospitalized as indoor patient as well as outdoor patient. On account of his absence from duty, an ex-parte inquiry was initiated against him by an order dated 7/4/1989. In the inquiry he did not participate, therefore, he was dismissed from service, against which he made representation before the authority, which was not considered. Therefore, he approached the extra constitutional authority i.e. Member of Parliament, who in turn requested the General Manager - present appellant no. 1 to consider the case of the applicant sympathetically. The said request was not acceded to. Therefore, he filed Original Application before the Tribunal only on March 10, 1995.

4. Before the Tribunal the original Application was objected the ground of gross delay and laches and also on the ground that though he had alternative remedy of appeal, he had not availed of that remedy. Therefore, O.A. should be dismissed.

However, learned Tribunal was not much impressed by the submission of railway on the ground of delay. According to the Tribunal, the representation made to the Member of Parliament was sufficient to condone the delay, if any, in approaching the Tribunal by way of the application. In our opinion the learned Tribunal was right in condoning the delay and entertaining the application on merits. It is unfortunate that though time and again the Hon'ble Supreme Court as well as this Court held that the Union of India or the State Government should not raise the technical pleas like limitation, etc. Union of India raised this plea before the Tribunal, but fortunately the said plea was not accepted by the Tribunal.

5. On merits the Tribunal was right in coming to the conclusion that admittedly ex-parte inquiry was held,

therefore, it has quashed the impugned order of dismissal. The only question which is required to be decided in this petition is, whether the Tribunal committed an error in awarding 50% back wages to the applicant ?

6. In the instant case the original applicant was suffering from mental disorder. Therefore, he was continuously remaining absent from duty. If proper inquiry was initiated, then, after hearing him, he could have been very well dismissed from service, but without holding proper inquiry the services of the respondent were terminated and, therefore, the impugned order of termination was quashed and set aside. However, the Tribunal in its order as well as the Division Bench of this Court while issuing notice and granting ad-interim relief in terms of para. 24(b) in this petition on 28/3/2003 clarified that the respondent original applicant be reinstated in service subject to his being found medically fit and the arrears of salary as well as monetary benefits upto 31/3/2003 were stayed by way of ad-interim order.

7. Under the interim orders of this Court the original applicant was medically examined and found fit, therefore, the applicant is reinstated in service. Therefore, only question remains regarding back wages.

8. Ms. Jani, learned counsel for the petitioner vehemently submitted that in the instant case no back wages should have been awarded by the Tribunal while passing the order of reinstatement in service. However, Mr. Trivedi, learned counsel for the respondent submitted that if not 50% back wages, then atleast some amount be paid to the applicant - respondent by way of compensation because for no fault he was illegally removed from service. Ultimately, both the learned counsel for the parties left it to the Court for passing appropriate order regarding back wages.

9. Having considered the facts and circumstances of the case and having carefully perused the impugned order of the learned Tribunal, we are of the considered opinion that while passing the impugned order of reinstatement in service, the Tribunal has not committed any error, which calls for interference by this Court. On the point of back wages, we are of the considered opinion that in the peculiar facts and circumstances of the case, no back wages should have been awarded by the Tribunal, as on technical ground the order of termination was quashed and set aside. The person, who constantly remains absent

from duty for a long time cannot be awarded 50% back wages. Atleast, this is not a case in which back wages should have been awarded.

10. In view of the above discussion, while maintaining the order of reinstatement in service, the order regarding 50% back wages passed by the Tribunal is hereby quashed and set aside. Accordingly, petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[B.J. SHETHNA, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.